Court No. 3

Criminal Misc. Application No. 273/2002

Ram Puri and others ....Applicants.

Vs.

State of Uttaranchal and another ....Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri M.L. Aggarwal learned counsel for the petitioner and Sri Pankaj Miglani learned counsel for the respondents.

(2). This is a petition under section 482 of the Criminal Procedure Code (hereinafter referred as 'Code') for quashing of the summoning order dated 8.11.2001 passed in criminal case No. 733/2002 Sidhpeeth Kalika Mandir Vs. Rampuri and others.

(3). The facts of the case are that some occurrence allegedly took place on 18.7.1998 at Kali Mandir where the petitioners are said to have criminally intimidated the complainant-respondent No.2 when the respondent No.2 reprimanded them not to act upon in pursuance of the forged will dated 3-2-1987 in regard to the properties of Chandi Devi Mandir at hill top. An altercation is said to have then taken place but no physical assault was made on respondent No.2. He moved an application under section 156(3) of the 'Code' before the Magistrate alleging that his report was not lodged by the police. The learned Magistrate passed an order directing the investigation by the police concerned, which took up the investigation pursuant to the said order and submitted final report. The notice was issued to the respondent No.2-complainant who filed protest petition and the learned Magistrate by order dated 6-08-2001 heard the complainant on the protest petition and rejected the final report but decided to proceed with the complaint under the provisions contained in chapter XV of the 'Code'. After recording of the evidence under sections 200 and 202 of the 'Code' the summoning order impugned in this petition was passed. The petitioners also preferred revision against the summoning order which was however dismissed exparte on 27.7.2002 by the District& Sessions Judge Haridwar.

(4). Learned counsel for the petitioners submitted that the application under section 156(3) of the 'Code' was preferred only to put pressure on them on account of the pending civil litigation although no such occurrence

as alleged had taken place on 18-7-1998 at Kali Mandir. It is well settled that the High Court under powers under section 482 of the 'Code' would not embark upon the inquiry as to whether the evidence of the complainant is reliable or not and the same will be sufficient or not to sustain the charge against the alleged wrong-doer. However if the allegations are apparently and ex-facie improbable the High Court will have power to quash the proceedings at the initial stage itself and also if there are circumstances to show that the complainant had resorted to criminal proceedings merely to put pressure on the accused to settle score and to pressurize him in regard to the civil dispute. It is not in dispute that civil litigation is pending between the petitioners and the respondent No.2 with regard to the alleged will dated 3.2.1987 prior to the alleged incident dated 18-7-1988. On the alleged date of occurrence dated 18.7.1988 the respondent No.2 as per the allegations of the complaint took initiative in reprimanding the petitioners who admittedly have not physically assaulted him and did not cause him any physical harm. There is mere allegation of criminal intimidation which in the facts of the facts of the case appear highly improbable and only a mean to put pressure on the petitioners-accused in view of the pending civil litigation between them in regard to the said alleged forged will. Considering this there are cogent and sufficient reasons to interfere with the summoning order and to have the same quashed.

(5). The petition is allowed. The summoning order dated 18-11-2001 is hereby quashed and the complaint is dismissed.

Dated: 23-9-2003 **(Irshad Hussain, J.)**

ISB